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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6094
DATE COMPLAINT FILED: 10/14/2008
DATE OF NOTIFICATION: 10/21/2008
LAST RESPONSE RECEIVED: 12/16/2008
DATE ACTIVATED: 12/17/2008
EXPIRATION OF SOL: 8/1/2013

COMPLAINANTS:

Democracy 21

RESPONDENTS:

American Leadership Project¹

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)
2 U.S.C. § 431(8)
2 U.S.C. § 431(9)
2 U.S.C. § 431(17)
2 U.S.C. § 433
2 U.S.C. § 434(b)
2 U.S.C. § 434(c)
2 U.S.C. § 441a(a) & (f)
26 U.S.C. § 501(c)
11 C.F.R. § 100.22
11 C.F.R. § 100.57
11 C.F.R. § 109.10(c)
11 C.F.R. § 114.10

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

¹ Allegations in this matter concerning _____ have been administratively severed from MUR 6094 and merged into _____

I. INTRODUCTION

This matter focuses on a complaint filed by Democracy 21 alleging that American Leadership Project ("ALP") violated the Federal Election Campaign Act, as amended (the "Act"), by failing to register and report as a political committee. In response, ALP asserts that it is not a political committee because it does not meet the "major purpose" test and has not received contributions or made expenditures in excess of \$1,000. According to ALP, its fundraising efforts did not implicate 11 C.F.R. § 100.57 because ALP mentioned issues it sought to discuss in communications but did not mention any federal candidate. ALP further states that "neither the solicitations nor the website materials state that any funds will be used to support or defeat a clearly identified federal candidate."

Based on available information discussed below, we recommend that the Commission find reason to believe that American Leadership Project violated 2 U.S.C. §§ 433, 434, 441b, and 441a(f) by: 1) failing to register as a political committee with the Commission; 2) failing to disclose contributions and expenditures to the public in reports filed with the Commission; 3) knowingly accepting contributions in excess of \$5,000; and 4) knowingly accepting contributions from prohibited sources.²

II. FACTUAL AND LEGAL ANALYSIS

A. BACKGROUND

ALP was formed on February 15, 2008 and is based in San Francisco, California. ALP files reports with the IRS under Section 527 of the Internal Revenue Code. 26 U.S.C. § 527. It has not registered with the Commission as a political committee. On its IRS Form 8871, the purpose

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1 of the organization is listed as "Section 527 political committee." According to one media
2 account, ALP is run by five individuals with extensive political experience and connections with
3 current and past Democratic candidates.³ On its IRS Form 8872, ALP reported contributions of
4 over \$3.4 million, with over \$2.5 million of that amount from labor unions, and expenditures of
5 over \$2.6 million during the period of February 15, 2008 to June 30, 2008.

6 ALP was formed ten days after Super Tuesday, February 5, 2008, when the greatest number
7 of states held primary elections to select delegates to the national conventions. See Jonathan
8 Weisman, *Shifting Loyalties: Cracks in Clinton Coalition May Mark a Turning Point*,
9 WASHINGTON POST, (Feb. 13, 2008), available at [http://www.washingtonpost.com/wp-
11 dyn/content/article/2008/02/12/AR2008021203196.html](http://www.washingtonpost.com/wp-
10 dyn/content/article/2008/02/12/AR2008021203196.html); Brian Knowlton, Patrick Healy and Jeff
12 Zeleny, *Obama's victories draw more voter groups as Democrats waver*, INTERNATIONAL
13 HERALD TRIBUNE, (Feb. 13, 2008) available at [http://www.ihl.com/articles/2008/02/13/america/
15 campaign.php?d=1493](http://www.ihl.com/articles/2008/02/13/america/
14 campaign.php?d=1493). ALP's activities and public statements appear to have been directed
16 almost exclusively toward supporting Senator Clinton's bid for the Democratic presidential
17 nomination. Based upon electioneering communications reports filed with the Commission, it
18 appears that ALP spent over \$4.2 million on broadcast ads that referred to Senator Hillary
Clinton and/or Senator Barack Obama and targeted the relevant electorate.⁴ ALP's website
contains media player clips of ALP's television and radio ads, all of which refer to a clearly

³ These individuals are Roger Salazar, Jason Kinney, Mattis Goldman, Erick Mullen, and Paul Rivera. See Posting of Jake Tapper to ABC News Blog, *New Pro-Clinton 527 to Ding Obama in Ohio*, <http://blogs.abcnews.com/politicalpunch/2008/02/new-pro-clinton.html> (Feb. 20, 2008, 09:33 EST).

⁴ The \$4.2 million in disbursements disclosed in ALP's electioneering communication reports is significantly larger than the amount of expenditures disclosed in its IRS findings. The discrepancy in the amounts may be explained by the different reporting requirements of the IRS and the Commission. For example, with respect to the contributions received, ALP may have received a large number of small donations that did not exceed the IRS' \$200 itemization threshold, and the IRS does not require the disclosure of unitemized receipts.

1 identified federal candidate and most if which ran in Oregon, Pennsylvania, Texas, Ohio and
2 Indiana, just prior to the Democratic primaries in those states.

3 Specifically, two ALP ads, "Blueprint" and "Count On," mention Hillary Clinton and her
4 record on middle-class economic issues and health care. "Count On" talks about Senator
5 Clinton's record on health care and "Blueprint" highlights Senator Clinton's record on jobs and
6 outsourcing. The ads end with a call for viewers to "Tell Hillary to keep working" for health
7 care and on "these solutions for the middle class," respectively. A third ad, "Every/Difference,"
8 explicitly compares Hillary Clinton's and Barack Obama's health plans, stating that "Hillary
9 Clinton's health care plan would help every American get affordable, quality health care. Barack
10 Obama's plan would leave as many as 15 million Americans uncovered." At the end, the ad
11 encourages viewers to "Call Barack Obama and tell him to support health care for all
12 Americans." After Senator Clinton suspended her campaign on June 7, 2008, ALP ran one radio
13 ad in Colorado during the Democratic National Convention that highlights Senator John
14 McCain's position on energy issues and ends with the tagline: "Call John McCain and tell him
15 Coloradoans need real solutions to our energy crisis."

16 According to a Politico.com article dated February 20, 2008, Roger Salazar, identified on
17 FEC Form 9 (24 Hour Notice of Disbursements/Obligations for Electioneering Communications)
18 as a person sharing/exercising control of ALP, e-mailed a reporter, informing him that Senator
19 Clinton is a "champion" of issues that matter to the middle class and that ALP supports her
20 positions in its ads. He reportedly wrote:

21 The American Leadership Project is a committee of Americans who have come together
22 to shine a backlight on issues that matter most to our nation's middle class and do it in a
23 positive way. These are positive ads that serve to raise awareness about these issues at a
24 critical time in our nation's history in places where they are paying the most attention.
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1 **Right now that's Ohio and Texas. Senator Clinton is a champion of these issues and**
2 **ALP supports her positions and we say so in the ads.**

3
4 (emphasis added).

5
6 For the majority of its existence, the group's website showed media player clips of ALP's
7 advertisements, all of which supported Clinton's candidacy. ALP also solicits for donations on
8 its website. The solicitation states: "To keep our TV ads on the air, please click here to make a
9 secure online contribution." Information pertaining to ALP's fundraising by other means, for
10 instance, through mass mailings, individual letters, or verbal communications, was not addressed
11 in either the complaints or responses.

12 **B. LEGAL ANALYSIS**

13 ALP may be a "political committee" subject to the contribution limitations, source
14 prohibitions, and reporting requirements of the Act. *See* 2 U.S.C. §§ 431(4)(A), 433, 434, 441a,
15 and 441b. Based on a review of the publicly available advertisements run by ALP and an
16 analysis of the current state of the law, we conclude that there is information available at this
17 stage suggesting that ALP received over \$1,000 in contributions, which would require the group
18 to comply with certain provisions of the Act.

19 **1. ALP May Have Received Contributions Exceeding \$1,000**

20
21 Available information suggests that ALP received over \$1,000 in funds in response to
22 communications indicating that the funds received would be used to support Hillary Clinton's
23 presidential campaign. A gift, subscription, loan, advance, or deposit of money or anything of
24 value made by any person in response to any communication is a contribution to the person
25 making the communication if the communication indicates that any portion of the funds received
26 will be used to support or oppose the election of a clearly identified Federal candidate. 11 C.F.R.
27 § 100.57(a).

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Specifically, ALP solicited donations on its website by posting a clickable button labeled "Contribute" next to media player clips of its television advertisements referring to Hillary Clinton and favorably describing her plans on various issues, or Senator Obama, Hillary Clinton's Democratic Primary opponent, with a negative description of his plan. See Section III.A, *supra*. The fundraising appeal on the "Contribute" page of the website states, "To keep our TV ads on the air, please click here to make a secure online contribution." Even though the specific words in the appeal do not refer to Senator Clinton or Senator Obama, they state that the purpose of the ads is to keep the ads on the air, and the button's physical placement next to media clips of those very ads results in a clear identification of the candidates. See 11 C.F.R. § 100.57(a). Each of these ads focused on Hillary Clinton's plan, or Senator Obama's lack of a plan, on a variety of issues ranging from healthcare, to clean energy, to the economy, such that the solicitation was clearly candidate-centered, not issue-centered. In this way, the website solicitation indicated to potential donors that their funds would be used to support Hillary Clinton's candidacy for President. The millions of dollars raised by ALP suggest that its online solicitation may well have raised in excess of \$1,000 in contributions. See 2 U.S.C. §§ 431(4)(A) and 431(8)(A)(i); 11 C.F.R. § 100.57(a).

2. ALP Had the Major Purpose of Federal Campaign Activity

In its response to the complaint, ALP's claims that its major purpose is "to raise public awareness of vital public policy issues affecting America's middle class – the economy and jobs, tax fairness, health care reform, public education, trade policy, and the mortgage crisis, among others – against the high-visibility backdrop of closely-contested primary elections." However, publicly available information suggests that the true objective of ALP was to influence the outcome of the 2008 Democratic presidential primary elections by supporting Senator Clinton.

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1 Roger Salazar is reported to have acknowledged that it would be fair to characterize ALP as a
2 "pro-Hillary committee."⁵

3 ALP's public statements, television advertisements, and website materials appear to
4 establish that the organization's major purpose was to influence Senator Clinton's election. The
5 timing of its formation, when Senator Clinton first appeared to be particularly vulnerable to
6 losing the nomination to Senator Obama and the upcoming primaries in Ohio and Texas
7 appeared critical to her success, highlights this purpose. Roger Salazar reportedly stated in a
8 phone interview with an interviewer that he "wouldn't deny" that ALP was an independent group
9 put together to support Hillary Clinton in the Ohio and Texas primaries.⁶ Moreover, as noted,
10 ALP's website contained media clips of its TV ads referencing Senator Clinton and solicited
11 funds to keep those ads running. Further, it appears that the vast majority of the funds raised –
12 over \$4 million in just a little over four months – were spent on its television advertising
13 campaign in states with upcoming Democratic primaries at a time when Senator Clinton needed
14 the most help in her contests with Senator Obama. Since Senator Clinton suspended her primary
15 campaign, ALP has, according to its most recent IRS report, received only \$1,050 in
16 contributions – a significant decline from the \$3.4 million it received between February 15 and
17 June 7, 2008 – and other than running one radio ad critical of Senator McCain, has had no other
18 significant activity. Thus, it appears that ALP's major purpose was federal campaign activity.

⁵ Posting of Jonathan Riskind to The Daily Briefing, Blog of the Columbus Dispatch, *New 527 group has pro-Clinton ad on the web*, http://blog.dispatch.com/dailybriefing/2008/02/new_527_group_has_proclinton_a.shtml (Feb. 20, 2008, 15:31 EST).

⁶ Posting of Jonathan Riskind to The Daily Briefing, Blog of the Columbus Dispatch, *Pro-Clinton Dems to start anti-Obama 527 Group?*, http://blog.dispatch.com/dailybriefing/2008/02/proclinton_dems_to_start_antio_1.shtml (Feb. 20, 2008, 11:02 EST).

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3. Conclusion

If ALP was operating as a political committee, it must comply with the Act's contribution limitations. See 2 U.S.C. § 441a(f). ALP, however, accepted contributions from individuals in excess of \$5,000, as well as from labor unions, a prohibited source. Therefore, we recommend that the Commission find reason to believe that American Leadership Project violated 2 U.S.C. §§ 433, 434, 441b, and 441a(f) by failing to register as a political committee with the Commission; by failing to disclose its contributions and expenditures in reports filed with the Commission; by knowingly accepting contributions from prohibited sources; and by knowingly accepting contributions from individuals in excess of \$5,000.

IV. RECOMMENDATIONS

1. Find reason to believe that American Leadership Project violated 2 U.S.C. §§ 433, 434, 441b, and 441a(f), by failing to register as a political committee with the Commission; by failing to report its contributions and expenditures; by knowingly accepting contributions in excess of \$5,000; and by knowingly accepting prohibited contributions;
2. Approve the attached Factual and Legal Analysis.
3. _____